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It is an act of culpable negligence in a ferry-boat to run on a dark night through a crowded harbor, and rely solely upon a wooden frame compass, which would not traverse so easily as a lighter one which was on board at the time.

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Any postmaster, who postpones the hearing of an application by the proprietors of a newspaper, *having the largest circulation*, for the privilege of advertising uncalled-for letters, is liable in an action for damages to the estimated amount of the cost of advertising during such postponement. *Rawson et al. v. Baggs*, 26.

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Bail was required in an action of assumpsit, but the recognizance of bail acknowledged before the sheriff and retained by him, describes the action as an action of debt: *Held*, nevertheless, that the recognizance was valid and sufficient. *Reid v. White*, 439.

*Bank*, 535.

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*Banking* Company.

Where an act of incorporation of a banking company provided that notice of organization should be given on or before a certain date, and the bank was found to be in operation afterwards under the act, it is to be presumed that it was organized as early as the time prescribed.

The bank of the United States (chartered by congress,) had no power to carry on banking operations after March 3, 1836, though it continued in existence two years longer for settlement of suits, &c. But on February 18, 1836, the state of Pennsylvania incorporated a banking company of the same name, in anticipation of the dissolution—the new company having,

with one exception, the same stockholders and capital, the same name and style, and the same capacity, so far as a state institution could have the capacity of a national one. On March 10, 1836, the defendants proposed "to purchase of the Bank of the United States the property of the office at Burlington, *as it was upon the 2d day of March, 1836.*" This contract was perfected April 1, 1836. *Held*, that it was a contract with the new company. *Bank U. S. v. Lyman et al.*, 156. *Barbour's Reports*, notice of, 286, 423. *Bill of Particulars*, 156. *Bingham on Infancy*, notice of, 378. *Boston City*, ordinance of.

That portion of the ordinance of the mayor and aldermen of the city of Boston, adopted July 12, 1847, which prescribes routes and streets on which certain lines of omnibuses were to pass, and prohibiting such vehicles from being driven on any other routes than those prescribed, and that which prescribes the stands of such omnibuses, are regulations which said mayor and aldermen may lawfully make, under the authority given by Stat. 1847, c. 224.

The provisions (§ 8.) of the ordinance of July 12, 1847, which requires the payment of a stipulated sum, and the obtaining of a license, as conditions precedent to the setting up of an omnibus or stage coach, to run from the centre of Roxbury to the centre of Boston, is not authorized by the city charter, or the statutes of the commonwealth, and is therefore void. *Commonwealth v. Stodder*, 547. *Bonvier's Law Dictionary*, notice of, 524.

## C.

*CASE OF PATTEE v. GREELEY*, '241, 325. *Charter*, 535. *Chilton's Digest*, notice of, 379. *Code Reporter*, notice of, 187. *Collision*.

When a collision takes place between a vessel under sail and one at anchor, the *prima facie* presumption, if there be any fault, is that it is on the vessel under sail.

A vessel entering a harbor is bound to keep the most vigilant watch to avoid collision with other vessels in motion or lying at anchor. In the night time she ought to have her whole crew on the deck on the look out.

When a collision takes place by the fault of one of the vessels, she is responsible for all the damage.

But if it happens without fault in either party—or if there was fault, and it cannot be ascertained which vessel was in fault—or if both were in fault, then the damage and loss is divided between them in equal shares.

A vessel ought not to be moored and lie in the channel or entrance to a port, except in cases of necessity; or, if anchored there from necessity, she ought not to remain there longer than the necessity continues. If she does, and a collision takes place with a vessel entering the harbor, she will be considered in fault.

A vessel lying in the channel of a port from necessity, is bound in the night time to show a light.

In cases of collision, a fault of one vessel will not excuse any want of care, diligence, and skill in another, so as to exempt her from sharing the loss and damage. *The Scioto*, 16.

*Collateral security*, 204.

*Common-carriers*, 44.

*Compound interest*, 217.

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*Conspiracy to defraud*.

Where, on the trial of an indictment for conspiring to cheat, the substantial proof consisted of showing the defendants' insolvency at the time of making large purchases for cash, unaccompanied with any representation of ability to pay, or false pretence or artifice to induce credit, an instruction, "that if the defendants were at the time so deeply insolvent that they could have no reasonable expectation of paying for the goods in the ordinary course of their business, they committed an offence against the insolvent law, which might be the subject of an indictment for a criminal conspiracy," was held erroneous.

*Held, further*, that the correct instruction should have been no more unfavorable to the defendants, than for the jury to inquire, "Whether they made the purchases in question, without expecting to pay for them, and *not intending* to pay for them."

The test of the *reasonable expectation* of a party, is not a just one in criminal matters; it should be of good or bad intention, and not of a mistake in judgment.

A sale "for cash," where the goods are parted with by the vendor, without insisting upon payment upon delivery, supposing no false pretence or representation to be used by the purchaser to obtain possession of them, is in law a sale upon credit, so far as relates to the question of fraud or criminal liability of the purchaser.

An indictment for a conspiracy to effect an object, not criminal in itself, should generally set out the means by which the conspiracy is designed to be carried out.

An indictment for a conspiracy to cheat held bad, which only charged that three defendants, (with circumstances of time, place, and recital of evil intention,) "*unlawfully conspired, combined, confederated*"

and agreed together, one P. S. to injure, cheat and defraud of his property, merchandise, goods and chattels." *Commonwealth v. Eastman*, et al. 256.

*Constitutional law*, 7.

Statutes of the several states which impose a tax upon passengers arriving from abroad, are unconstitutional, although states may pass *quarantine* laws, and impose penalties and exact payment of expenses, such laws not being regulations of commerce. *Smith v. Turner*, *Norris v. Boston*, 487.

*Construction of Will*, 371, 372.

*Contract*, 356, 357.

*Copyright*, 42, 372.

*Corporation*.

When an act of the state which grants a charter to a private corporation is necessary before the corporation can be organized under the charter, no forfeiture can be occasioned by non-user, nor can an abandonment of the charter be imputed to the corporation afterwards organized.

A charter granted by a state to a private corporation is a contract executed on the part of the state by the passage of the law making the grant.

The assent of the grantees of the charter is to be presumed, and no written or formal acceptance is necessary.

If there be no person designated in the charter in whom the franchise is to vest, it remains in abeyance until the association is formed, when it immediately vests in the corporators. If there be a person so designated, the franchise vests immediately in him, and it is immaterial whether he is the direct beneficiary, or only a trustee appointed for the benefit of the corporators afterwards to be organized. *Attorney-General v. Williams*, 535.

*Corry, W. M.*, Correspondence with Chief Judge Birchard, 37, 87.

*Costs*, Rule in relation to.

The complainants had brought a bill in equity against the respondents for an alleged infringement of copyright. The case having been referred to the master, at a former term, was argued on his report, and the court refused to grant an injunction, but ordered the case to be continued to enable the complainants to bring a suit at law if they saw fit. The respondents moved that the bills be dismissed with costs, but *Woodbury, J. held*, that the case seemed to come within one of the exceptions to the general rule, that costs must go with the prevailing party. The exception was, that where the remedy in equity was refused, and yet the party plaintiff might proceed at law, costs would not be allowed. But the complainants must stipulate that they will not proceed at law or costs will be allowed. It was ordered that costs should be refused to both parties, if the com-

plainants should, within ten days, enter a stipulation not to proceed at law. *Webb et al. v. Bowers et al.*, 84.

*Counterfeit Coin*.

The rights of sheriffs and executive officers of courts to seize counterfeit coin, &c., considered on the general grounds of preventive justice as well as of statute regulation.

When counterfeit coin has been seized under the direction of a prosecuting officer to be used as evidence against a person awaiting trial, and for the further purpose of preventing its circulation, an action of trover will not lie against the sheriff, especially if the owner fail to show that the coin was put into its present form without his knowledge or at least against his consent. *Spaulding v. Preston*, 453.

*County Commissioners*, powers of, 77.

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The acts and admissions of one of several joint contractors or promisors, are admissible as evidence against all, more especially if the party making the admissions, was acting as the agent of the others, and the admissions relate to acts within the scope of his authority.

If a note is payable to S. J., cashier, or order, &c., parol evidence is inadmissible, to prove that the bank, of which S. J., is cashier, was the real party in interest, and such a note is not evidence, in an action of money had and received, or of an account stated, brought in the name of the bank.

If the banking company, though not the payees, were the real owners of the note, and there had been an actual accounting with them, or their agents, such proceedings might constitute sufficient evidence to support the declaration described above: but an accounting with

third persons to whom the beneficial interest of the bank has been assigned in trust for specified purposes, would not. *Bank U. S. v. Lyman et al.* 157.

The true date of the execution of an instrument, differing from that appearing on its face, may be shown by parol testimony. *Pattee v. Greeley*, 253.

As a general rule, a party cannot be a witness in his own cause.

Nor will he be permitted to avail himself of evidence by indirect means, which would be rejected as incompetent, if offered directly.

In cases of criminal prosecutions for a cheat, perjury, &c., the party aggrieved is a competent witness for the prosecution.

But where he has been used as a witness for the prosecution, the record of conviction is inadmissible in a civil proceeding instituted by him for relief against the fraud.

In an action for the infringement of a patent, within the county of Albany, in the state of New York, brought by parties claiming the exclusive right to the patent in that county: *held*, that a party who was possessed of the exclusive right to the patent in several counties in that state, but who had no interest in the patent in the county of Albany, and no interest in the suit in which he was called, was a competent witness for the plaintiffs.

But a verdict for the plaintiffs could, under no circumstances, be evidence for such witness, in a trial at law or in equity, on the merits of the patent, although it would be admissible on a preliminary motion for an injunction in a suit in equity.

The record of such verdict would be evidence for such witness only where his own deposition would be competent, that is, where the application is to the sound discretion of the court, as on a preliminary motion for an injunction. *Buck v. Hernance*, 321.

Letters coming from the custody of an insolvent's assignee, purporting to be addressed to the insolvent, are not to be received as evidence against him, of facts stated therein, but only, if sufficiently connected with the insolvent in the first instance, of the fact of such statements having been so addressed to him, in order to show his further action thereon.

A party's action upon written communications addressed to him though admissible as evidence against him in the nature of a confession or admission of the truth of those statements, is not entitled to the same weight as his action in reference to communications made orally.

An estimate not under oath, signed by two appraisers, is not admissible as their

joint appraisement, unless both are called to testify to it.

On the trial of conspirators, for conspiring to cheat, it is competent to show their general credit, and ability to purchase upon trust.

So, evidence is admissible of other transactions in the way of purchases, at or about the time of the acts laid in the indictment, than those acts, for the purpose of proving their criminal intention.

So, of their drawing against bills of lading purporting to show consignments of goods, when no such goods were owned by them at the time of filling out and forwarding such bills.

It is within the discretion of the court to permit a prosecuting officer, after closing his case in evidence, to cross-examine a defendant's witnesses to points not sufficiently pruned in his opening.

Letter-press, or copying-machine copies of letters are not admissible as standards of comparison, from which the jury may infer whether a disputed signature, or writing, is that of a defendant's. *Commonwealth v. Eastman et al.* 256.

*Equity*, 171, 350.

A court of equity, will not, in a contest between persons who profess to be manufacturers of *quack* medicines, interfere to protect the use of trade marks, by injunction.

A complainant, whose business is imposition, cannot invoke the aid of equity against a piracy of his trade marks, *Fowle v. Spear*, 130.

*Evidence*, 545.

*Evidence*, to prove general custom inadmissible, 79.

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*Exceptions*, 249.

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In a proceeding to recover a fine for the exercise of banking privileges without authority of law, the question of the forfeiture of the charter of the banking corporation from non-user, cannot be raised until the forfeiture is declared in the proper and usual way; the corporation can continue to exercise its franchise. *Att'y General v. Williams*, 535.

*Former judgment*.

A plea of former judgment in favor of the defendant, is a plea in estoppel, and must have the proper commencement and conclusion of such a plea, relying on the estoppel.

The former judgment is no estoppel unless it were rendered on the merits; but that fact need not be averred in the plea.

*Reid v. White*, 439.

*Franchise*, 535.

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*Gholson, James H.*, Obituary Notice of, 288.

*Gordon's Digest*, Notice of, 186.

*Grants*.

The word "grants" in the second section of the act of the Republic of Texas, introducing the common law, has a general meaning including all grants, and is not restricted to "grants of land." Att'y General *v. Williams*, 535.

*Greenleaf on Evidence*, Notice of, 379.

*Greenleaf, Professor*, Letter of, to Law Students, 188.

## H.

*Habeas Corpus*.

If a writ of *habeas corpus* be applied for on behalf of any person unlawfully restrained of his liberty without authority from such person, an action of trespass may be maintained by the person restrained against the person interfering,—but not otherwise. *Linda v. Hudson*, 33.

*HAMPDEN, DR.*, CASE of, 49.

*Highway*.

An inhabitant of a town, as well as a stranger, may maintain an action against the town for damages caused by a defect in the highway. *Strout v. Durham*, 116.

*Highway*, Dedication of, 505.

*Hilliard's Elements of Law*, Notice of, 424.

*Holcombe's Law of Debtor and Creditor*, Notice of, 376.

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## I.

*Incorporation*, Act of, 156.

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*Injunction*, 371, 372, 373.

The Courts of the United States have no authority to enjoin the officers of the government against performing any act not merely ministerial.

The question whether a power of attorney from an Indian woman to another person, to recover the amount due to said Indian woman upon a land reservation (agreeably to the Indian treaties) and to retain half the amount recovered, as a compensation, is so far contrary to the policy of the resolution of March, — 1848, as to justify the officers of

the treasury department in refusing to pay the amount recovered, or any part of it, to such attorney, and the question whether such power of attorney be duly executed, are questions to be decided according to the discretion of the respective officers of the treasury; nor can the courts of the United States interfere in any way to guide or control the executive officers, or to entertain any appeal from his decision. *McElrath v. McIntosh*, 400.

*Insanity*.

In actions arising *ex delicto*, the insanity of the defendant, at the time of committing the injury, may be a defence to the action; — and if the defendant labors under a partial insanity, it is not necessary to show that the act in question was the immediate and unqualified offspring of the particular delusion, to make the defendant irresponsible.

In an action of slander, evidence of the insanity of the defendant is admissible to repel the legal presumption of malice, and in mitigation of damages.

Evidence of hereditary insanity in the defendant's family is admissible in civil as well as in criminal cases. *Pratt v. Ford*, 420.

*Insolvent Law*.

A person intending to take the benefit of the insolvent law, may, in the absence of any fraudulent intent, lawfully transfer a note to any one, who proposes to become his surety for the fees of a master in chancery.

The title of a third person cannot be set up in defence to an action on a note, regularly and honestly negotiated. *Fogg v. Willcut*, 31.

*Insolvent Law*, Construction of, 34.

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*Lex loci Contractus*.

It is a well-settled rule, that the courts of one country will not enforce either the

criminal or penal laws of another; nor will they carry out or be guided by the laws of another, regulating the forms of actions, or the remedies provided for civil injuries. But it is equally well settled, that in the construction of contracts, and in ascertaining whether they are valid, the law of the country where the contract was made, or to be performed, shall in general, govern.

The *lex loci* only governs in ascertaining whether a contract is valid, and what the words of the contract mean. When the question is settled, that the contract of the parties is legal, and what is the true interpretation of the language employed by the parties in framing it, the *lex loci* ceases its functions, and the *lex fori* steps in and determines the time, the mode, and the extent of the remedy. *Sherman v. Gassett*, 304.

*Licenses*, 547.

*License Laws*.

Three distinct sales are necessary to constitute a common seller. *Commonwealth v. Tubbs*, 34.

*License Law* (of Connecticut.)

Where an information, on the statute entitled "an act regulating the sale of wines and spirituous liquors," averred, in the language of such statute, that the defendant, at a certain time and place, did keep a certain house, store, and shop, for the purpose of selling wine and spirituous liquor, to be drank thereat; it was *held*, that the words house, store, shop, being synonymous, said information was not bad for duplicity.

In such information, it is not necessary to state the time, when the offence is alleged to have been committed, in words at full length, but the same may be expressed in figures.

Although penal statutes are to receive a strict construction, they are also to be so construed as not to lead to an absurdity, or defeat the manifest intention of the legislature. *Rawson v. Connecticut*, 113.

*Lien*, 356.

*Light*, vessel in channel bound to show one, *The Scioto*, 16. *Lenox v. Winisimmet Co.* 80.

*Lost Instrument*.

The evidence of the loss or destruction of a written instrument so as to lay a foundation for the introduction of secondary evidence as to its contents, is a preliminary question addressed solely to the court. *Fitch v. Bogue*, 545.

Where a bill in equity was brought to obtain relief in regard to a negotiable promissory note, lost when over due, and not indorsed, and where an affidavit of the loss was annexed to the bill, but no indemnity tendered, either before or after process, to the defendant, and where the claim was barred by the statute of limita-

tions, it was *held*, that the bill could be sustained, as there was no necessity of any indemnity. Whether the bill could not be as well sustained, though the claim were not barred by the statute of limitations. *Quære?*

Where the account given by the orator in a bill of equity of the loss of a note, is somewhat unsatisfactory, and where, at the same time, the defendants do not, in the first instance, move for an indemnity, and deposit the money subject to the order of the court, a court of equity will give costs to neither party.

Cases considered in which a court of equity will interfere in regard to lost instruments. *Hopkins v. Adams et al.* 350. *Louell*, Judge, Notice of, 425.

*Lunacy*.

When a person apparently of sound mind, and not known to be otherwise, enters into a contract, which is fair and *bonâ fide* and which is executed and completed, and the property, the subject-matter of the contract, cannot be restored, so as to put the parties *in statu quo*, such contract cannot afterwards be set aside either by the alleged lunatic or those who represent him; and therefore,

In an action by the personal representative of a lunatic to recover from an assurance society the price of two annuities on his life paid by the deceased to the society, a special verdict found, that the purchasing of the annuities were transactions in the ordinary course of the affairs of human life, and that the granting of the annuities were fair transactions and of good faith on the part of the society, without any knowledge or notice on the part of the society of the unsoundness of the mind of the deceased: — *Held*, that the action could not be maintained. *Milton v. Camroux*, 357.

*Mandamus*.

The U. S. Courts have no authority to cause a writ of *mandamus* to issue to the secretary of the treasury to cause a credit to be entered on the books of the department, when there is no special law requiring such a credit to be entered. Nor have the Court authority to cause the amount of such credit to be paid where there has been no specific appropriation. *Ex parte Reeside*, 448.

## M.

*Marriage*.

The marriage of a female infant does not merge the disability of infancy in that of coverture, so as to require that the husband and wife shall bring their actions, for claims of the wife, within the time limited after the marriage. The suit of the husband and wife is within the saving clause of the statute of limitations in favor of infants, in like manner as if the wife

had continued sole. *Bloxom v. Bagwell*, 228.

*Marsh*, Charles, Obituary Notice of, 527.

*Mason*, Jeremiah, Obituary Notice of, 334.

*Mesne Profits*.

A claim for *mesne profits* is a cause of action, which, if recoverable at all, is one of common law, and not of equity jurisdiction.

Such claim is in its nature local, and if by the law where it occurs it does not survive, it would seem could not be allowed against the estate of the recoveree in ejectment, in another jurisdiction where he had his domicile at the time of his decease, even if such cause of action did there survive.

If it could be allowed against such estate, it is of such a character, that it must be presented to the commissioners of insolvency, or *else it is barred*.

All claims, of a merely legal character, are barred, if not presented. *Burgess v. Gates*, 317.

*Metcalf's Reports*, Vol. XI. Notice of, 285.

*Miller*, Trial of, 331.

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#### Mortgage.

To a *scire facias* to foreclose a mortgage, the defendants pleaded the usury laws of Massachusetts, alleging in substance, their indebtedness to plaintiffs; that in order to obtain forbearance thereon, they executed certain notes therefor, pay-

able in Boston at intervals, with ten per cent. interest semi-annually, which notes were intended to be secured by the mortgage sued on; and that, though the notes appear on their face to have been executed in Chicago, they were in fact executed in Boston. The mortgage was acknowledged and recorded in Cook county, on the day of its date: *Held*, that the forfeiture provided for in the usury laws of Massachusetts being a part of the law of remedy, could not be enforced by the courts of this state.

To a *scire facias* to foreclose a mortgage, a plea commencing as a plea of part payment, and concluding by praying judgment, was interposed, to which there was a general demurrer, which was sustained: *Held*, that payment in part, or in whole, might properly be pleaded, and that, in this case, if the plea had been specially demurred to, it should have been held bad. *Sherman v. Gassett*, 304.

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*Omnibuses.*

The business of carrying persons for hire from town to town, in stage coaches and omnibuses, is not so far a territorial occupation or employment, as will authorize the city government of Boston to require a license from the mayor and aldermen, before exercising that employment. A by-law, to that effect, is an unnecessary restraint upon the business of those carrying passengers for hire, and not binding upon inhabitants of other towns. Commonwealth *v.* Stodder, 547.

## P.

*Partnership.*

Where there are no articles of partnership, a partnership is determinable at the will of either partner.

A surviving partner holds the partnership effects merely as a trustee for the payment of debts existing at the time of dissolution, while he is bound to distribute the balance equitably between himself and the representatives of the deceased partner. It is his duty at once to make sale of all the partnership property, *at once*, collect outstanding demands, pay all debts, and divide the balance.

A partnership formed for conducting a newspaper, is commercial in its character, and the law applicable to commercial or trading transactions determines the rights of the parties.

A surviving member of such a partnership is not entitled to the good will, subscription list, speculative value of a newspaper published by him and his deceased partner; but it is partnership property, which must be sold with the partnership effects.

A court of equity can order a sale of all the partnership property, when the surviving partner neglects to perform his lawful duties. And if the surviving partner be guilty of such mismanagement as clearly proves him unfit to be entrusted with the partnership estate, a court of equity will appoint a receiver to collect the debts and dispose of the property. Holden's Admr's *v.* McMakin, 171.

An indorsement by a surviving partner, in the name of the firm, after the death of the other member, of a note payable to the

firm, is useless, but the survivor may recover on the money counts. Fowle *v.* Harrington, 32.

*Passengers*, 547.

*Pattie v. Greeley*, case of, 325, 379.

*Pea-Patch* case, 374.

*Penal Statutes*, 113.

*Pennsylvania Law Journal*, notice of, 35.

*Pinkerton*, Sarah Jane, Trial of, 138.

*Power* of congress to regulate commerce, 487; exclusive, *ib.*

*Practice.*

A member of a firm cannot be summoned as a trustee in his individual capacity, where he is only a member of the firm. Warren *v.* Gibbs and trustee, 116.

The discharge of one of several joint co-defendants, or the permitting his case to go first to the jury, in order that he may become a witness for the others, is a discretionary matter with the court, where there is any evidence tending to criminate such defendant.

A motion to quash an indictment is a matter within the discretion of the court, and only to be sustained in case the court should be satisfied that no finding of the jury upon such indictment could be sustained.

Whether a demurrer to an indictment for a misdemeanor, in Massachusetts, involves the whole merits of the case, so that the defendant cannot plead over in case of a decision unfavorable to him, — *quære*. Commonwealth *v.* Eastman et al., 256.

A petition for the removal of a cause from the State to the United States courts, should be filed at the time of entering the appearance. Jordan: Prot. Ins. Co., 118.

Where, in the court below, a verdict is found for the defendant, and both plaintiff and defendant take exceptions to the ruling of the court, and the exceptions are allowed on both sides, if the court sustain the exceptions of the plaintiff, and at the same time sustain those of defendant upon points that are fatal to the plaintiff's right to recover, the verdict must stand. Lex. & W. Camb. R. R. Co. *v.* Chandler, 249.

Course to be adopted when the *ad damnum* in the writ is less than the verdict. Hall *v.* Boston, 82.

*Practice*, Time within which a motion may be made to dismiss a writ for alteration after service, 79.

*Practice*, points of, as to bill of particulars, 77.

*Preference* of creditors, 355.

*Presumptions*, 72.

*Procedure*, N. Y. Code of, 472.

*Promissory Note*, 32, 356.

A notarial protest set forth that the notary "went to the counting-house of T. W. C., upon whom the said bill is drawn, and speaking to a clerk, exhibited unto

him the said bill, and demanded acceptance thereof; whereunto he answered, that the same could not be accepted.—*Held*, that the evidence of dishonor was sufficient if the clerk were proved to have been instructed by the drawee to refuse acceptance. Whether the clerk's authority could be inferred from any local usage, *quære*.

Where notice of protest, which might have been sent by a packet-ship from England to America, was kept back until the sailing of the next Cunard steamer, so that it did not reach this country as soon as it would have done if sent by the packet-ship, the court instructed the jury, that the notice was forwarded in due time, if they believed from the evidence that "the Cunard line of steamers was the regularly established mail line between Great Britain and the United States, and was the regular and ordinary mode of communication, &c.," and that the notice was sent by the first steamer leaving after the protest.

It being the usage of London to leave a bill with the drawee for twenty-four hours, without regard to the posts, the holder of a bill, who receives it on the third of the month, in time to acknowledge its receipt by steamer of the fourth, is *not* bound to present it on the same day, though he might, by so doing, have forwarded notice of protest on the fourth. *Bank of Va. v. Stainback*, 495.

If the consideration of a note be fraudulent between the original parties, a subsequent holder will be held to strict proof that he paid value for it.

A promissory note or bill of exchange, which is made negotiable by the law of Pennsylvania, and is transferred to the holder as collateral security, merely for an antecedent debt or liability, without notice of fraud, will not confer such a title on the holder as will exclude all equities between the maker and the payee, or any previous holder. *Prentice et al. v. Zane*, 204.

Where, upon the purchase of land, two promissory notes were given, and at the same time the payee of the notes, who was the owner of the land, executed a bond to the makers of the notes conditioned to convey the land to them in one year, if the notes were first paid and a house erected upon the premises, and when the land in question was the day after the date of the notes conveyed by mistake to a third person, but had, before the commencement of the suit, been reconveyed to the original owner, in a suit upon the notes, it was *held*, that the conveyance of the land was no bar to the action.

The *partial failure* of the consideration of a note is not a sufficient defence.—*Wells v. Howard*, 345.

## Q.

*Quack* medicines, 130.

## R.

*Railroad* conductors and passengers, Rights of, 461.

*Railroad* corporation.

Where, in the charter of a railroad corporation, it was provided that the capital stock should "not exceed two thousand shares, the number of which shall be determined from time to time by the directors thereof," and where, subsequently, the directors of the corporation voted "to close the subscription books of the capital stock," and no other vote was passed determining the number of shares; *held*, that this was a sufficient determination of the number of shares.

Where a subscriber to the capital stock of a railroad appeared at the meeting of the subscribers for the purpose of organization, and took part therein, and voted for officers of the corporation, *held*, that it was sufficient proof of his assent to be a stockholder, and a ratification of his prior subscription.

Though the by-laws of a corporation require notice in certain cases to be given by mail, notice by a private messenger is sufficient, if in that way it reaches the party as soon as he would have received it by mail. *Lex. & W. Camb. R. R. Co. v. Chandler*, 249.

*Railway* accidents in France, Damages for, 45.

*Receiver*, 171.

*Religious* society.

A religious society may assess taxes, in any proper mode, if the statute provide no particular mode.

Any person who takes a deed from any religious society is estopped from denying the right of the society to make the conveyance, and from asserting that a change of the name of such society was a fundamental change in its constitution.

A standing committee of a religious society may be authorized to assess its taxes. Nor is it necessary to assess such taxes every year. A subsequent misapplication of the funds would not affect the validity of the taxes.

A religious society has no right to lay a tax *without* consent of the proprietors, but a condition may be inserted in the pew deeds, that the grantee shall pay such sums of money as may be assessed by a legal vote, which will, when such deed is accepted, amount to consent by such grantee. *Mussey v. Bulfinch Street Society*, 27.

*Renunciation* of Probate, 373.

*Replevin,*

Where the original taking of goods was unlawful, and a wrong which the courts will redress, an action of replevin will lie to relieve the owner of goods from irreparable loss by long delay. *Spalding v. Preston*, 453.

REPORTS OF MASSACHUSETTS, 481, 529.

*Retraction of Renunciation*, 373.

## S.

*Seal, Scroll*, 60.

In those states where a scroll is allowed instead of a seal, no distinct recognition need be expressed on the face of the instrument, that the writing was sealed by the party who signed it. *Stewart v. Stewart's Ex'r*, 60.

*Select decisions of American Courts*, by

Hare & Wallace, Notice of, 36.

*Schwyn's Nisi Prius*, Notice of, 186.

*Sheriff*, 355.

*Shriver*, Abraham, Obituary Notice of, 240.

*Slave Case at Detroit*, 237.

*Slavery,*

The provincial act of 1740, § 34, which is still in force in South Carolina, denies to slaves the right to hold property in certain articles, and then provides that "it shall and may be lawful for any person or persons whatsoever to seize and take away from any slaves all such goods, commodities, boats, periaugers, canoes, horses, mares, neat cattle, sheep, or hogs, and deliver the same into the hands of his Majesty's justice of the peace, nearest the place where the seizure shall be made." This act does not justify a trespass, nor does it authorize the party seizing such property to enter land of another.

Evidence of conversation with a magistrate previously to attempting the seizure, held inadmissible. *Richardson v. Broughton*, 120.

*Smith's Commentaries*, Notice of, 377.

*Solicitor*, 373.

*Specific performance.*

A specific performance of a personal contract will be enforced in equity where the party wants the thing in specie and cannot otherwise be compensated, where an award of damages would not put him in a situation as beneficial as if the agreement was specifically performed; or where compensation in damages would fall short of the redress to which he is entitled.

The rule being mutual if the party agreeing to sell an article would be bound to perform specifically, he can compel the other party to pay, notwithstanding that decree would be nothing more than a verdict of judgment at law. *Phillips v. Burgher*, 84.

*Squinting Jury*, 476.

*State Trials in Ireland*, 282.

*Statute of limitations*, 228.

*Statutes*, comparison of, 117.

*Statutes*, 156,

The exposition of the statutes of any state by the courts of that state, is always regarded as of binding authority in the construction of such statutes by courts of other states. *Prentice et. al. v. Zane*, 204.

*Statutes.*

When an act repeals "all laws in force at any time before its passage," it must be understood to refer to and embrace those laws that are of a general and public nature, and it does not include private laws passed for the relief or benefit of individual citizens.

It seems that when an act repeals all laws in force at a certain time, if one of those laws has been recognized and ratified by a subsequent act, the repealing act does not extend to it.

An act annulling, impairing, altering, or restricting the privileges granted by the charter of a private corporation, impairs the obligation of a contract, and is therefore unconstitutional and void. *Attorney General v. Williams*, 535.

*Sunday.*

A law prohibiting the sale of goods on Sunday is *not* a violation of the constitution of South Carolina, which provides (Art. 8, § 1,) for "the full exercise and enjoyment of religious profession and worship, without discrimination or prejudice." City Council of Charlestown v. Benjamin, 7.

An action cannot be maintained for a deceit practised in the exchange of horses on the Lord's day. *Robeson v. French*, 418.

Contracts made on Sunday are void, unless for works of necessity or charity. Comparison of statutes. *Webster v. Abbott*, 117.

A bond made upon the Lord's day is void. *Pattee v. Greeley*, 253.

## T.

*Taylor on Evidence*, notice of, 135.

*Taxes* by religious societies, 27.

*Telegraph Suit*, 284.

*Tenants* in common, 355.

Assumpsit will not lie by one tenant in common against another, for rents and profits of the common estate. *Mason v. Mason*, 119.

*Texas*, 535.

THE ASSOCIATION OF THE BAR, 434, 468.

THE POST-OFFICE MONOPOLY, 385.

*Trespass*, 33, 374.

TRIAL OF DR. COOLIDGE, 1.

*Trial of Epes*, notice of, 524.

TRIAL OF JOHN MITCHELL, 193.

## TRIAL OF WILLIAM FREEMAN, 289.

## Trust.

In the absence of a provision for accumulation, a trustee will not be charged with compound interest, merely because he has mingled the trust funds with, and used them as his own, without making an investment.

The English cases on the subject of interest against trustees examined, and *Raphael v. Boehm*, 11 Vesey, 92; 13 ib. 407, 590, explained.

A committee of a lunatic who has accounted fairly, and conducted himself *bona fide* in the management of the funds and property of the lunatic, and who has used the property as his own, but without investment in any trade or speculation, should be charged with simple interest only. *Ker's Adm'r v. Snead et al.*, 217.

*Trustee* process, 116, 118.

*Tucker*, Henry St. George, obituary notice of, 289.

## U.

United States Courts, Attachments in, 44.

## V.

Verdict, 82, 249.

## W.

*Ward*, Joshua H., Obituary notice of, 141.

*Warranty* of title, 272.

*Washburn's Reports*, Notice of, 223.

*Wharton's Precedents*, Notice of, 423.

*Whitman*, Chief Justice, Notice of, 72.

*Wilful burning*.

Whether proof of partial burning will sustain an indictment under Stat. 1804 ch. 40, *quare*?

A minor who ships on board vessel without the knowledge of his parents, "belongs" to the vessel so far as to render him liable under the above statute. In criminal and capital cases, a jury must act on strong probabilities. The mere possibility that this fire might have been occasioned by spontaneous combustion, or might have been set by accident, is no answer to strong evidence making it probable that a particular person set it. *United States v. Lockman*, 151.

*Will*.

A devise to "children," means "legitimate children," if there are any; and unless a contrary intention appear on the face of the will, evidence *dehors* the will will not be admitted to show the testator's intention. *Crosby v. Lewis*, 460.

*Witnesses*, Disqualification of, 43.

*Women's Rights*, 238.

*Writing*, obligatory, 60.